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DEPT FOR WHA/CEN, WHA/EPSC, WHA/PPC AND EEB
PLEASE PASS TO USTR DOLIVER/AMALITO
MANAGUA FOR DAVID KRZYDA:PLEASE PASS TO AUSTR EISSENSTAT

E.O. 12958: N/A

TAGS: [CS](#) [ECON](#) [ETRD](#) [PGOV](#) [PREL](#)

SUBJECT: SCENESETTER FOR AUSTR EISSENSTAT'S VISIT TO COSTA RICA

REF: A. SAN JOSE 0232

- [1](#)B. SAN JOSE 288
- [1](#)C. SAN JOSE 263
- [1](#)D. 07 SAN JOSE 1926

[1](#)1. (SBU) SUMMARY: Embassy San Jose warmly welcomes AUSTR Everett Eissenstat. His visit to Costa Rica is timely, and will help us keep the pressure on the GOCR to complete CAFTA implementation. The Arias administration remains deeply committed to CAFTA, and is making progress, but slowly. Although all the major parties in the legislature have agreed to move ahead on CAFTA, the government's pro-CAFTA coalition remains fragile. The legislature (Asamblea) has also been distracted by other issues including domestic security, an investigation into allegations of FARC ties to Costa Rica, and the May 1 leadership elections. Six of 12 CAFTA-related bills have been completed; six others remain in work, including those covering controversial IPR and insurance issues, and one more remains to be introduced. Whereas the entry-in-force (EIF) extension granted on February 27, Commerce U/S Padilla's February 28-29 visit (Ref A) and WHA DAS Madison's March 31-April 3 visit (Ref B) described the red lines on the schedule for implementation (no later than October 1), this visit can set the red lines on substance. See snapshot of pending issues, para 11. END SUMMARY.

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THE CAFTA SCORECARD
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[1](#)2. (U) As of April 21, the Asamblea has completed half the CAFTA-legislation (six of 12). Of these, three are law (covering foreign-owned firms, penal code reforms and UPOV compliance), and three are pending signature and publication as law (the Budapest Treaty, the UPOV convention and a bill governing certain patent and trademark reforms). A seventh and eighth bill (ratifying the International Trademark Treaty and opening the telecom sector) are pending the Asamblea's second and final vote. A ninth bill (on IPR reforms) was bounced by the Supreme Court for constitutional questions (see para 6 below). Three bills (on modernizing telecommunications, opening the insurance market, and making additional IPR changes) are in varying stages of action. Of note and new to this process, there will be a 13th bill, according to the Ministry of Foreign Trade (COMEX), which will ratify various CAFTA amendments accepted by the other parties. To summarize:

COMPLETED BY ASAMBLEA:

Signed into law:	3
Pending signature:	3

IN WORK BY THE ASAMBLEA:

Returned by Supreme Court:	1 (Asamblea to correct and vote again)
Pending final vote:	2
Under debate:	3

To be introduced:	1
TOTAL	13

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THE CAFTA CHALLENGES
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[1](#)3. (SBU) This Asamblea had made more progress on CAFTA legislation in the four months from November-February than its predecessor had in the f

[1](#)4. (SBU) Their first challenge: keeping all 38 coalition members (the G38) together. This is important because a two-thirds majority (precisely 38) is needed to form a quorum, to set rules and to manage most legislation. From time to time, various members of the coalition ha Christian Unity Party (PUSC) member Bienvenido Venegas, for example, has stubbornly refused to support the CAFTA legislation until his home prc

[1](#)5. (SBU) Their second challenge: the opposition, led by the Citizens Action Party (PAC), a steadfast opponent of CAFTA even after the October 7 referendum ratified the agreement. PAC's reluctance to cooperate blocked quorum on a number of occasions, and stalled the legislation. PAC leaders insisted there was no hurry to pass the bills, and reveled in the pro-CAFTA coalition's internal wrangles. However, under relentless pressure from the GOCR and a private sector ad campaign that criticized them for ignoring the will of the people as

[1](#)6. (SBU) Their third challenge: the Supreme Court, specifically the Constitutional Chamber (Sala IV), which reviews most legislation between the required first and second votes of the Asamblea. The opposition has ensured that all CAFTA bills are reviewed by the Sala IV, delaying the legislative process, but only one bill has been bounced for corrections to date. By unanimous vote on April 4, the Sala IV found the penalty provisions of the IPR bill "disproportionate," and in violation of the principle of "reasonable penalty." By the same vote, the Sala IV also ruled that the provision which permitted seizure of items produced in violation of IPR protections contravened the right to private property. The Asamblea is to begin action on these corrections as soon as the final text of the Sala's ruling is available.

[1](#)7. (SBU) Their fourth challenge: political distractions. A special committee is to begin taking testimony the week of April 21 on allegations by the previous Minister of Public Security that the Colombian FARC had ties to some political figures, including legislators, in Costa Rica. This stemmed from information discovered after the Colombian March 1 raid which killed FARC leader Raul Reyes in E

[1](#)8. (SBU) In addition, political maneuvering is under way, even among the pro-CAFTA coalition, for leadership positions during the legislative year which begins May 1. Complicating the political dog fighting this time: the president of the Asamblea who takes office on

May 1 will likely become the next VP of Costa Rica, when the incumbent, Laura Chinchilla (whom Eissenstat will meet), resigns as expected (and as required by law) in early 2009 to campaign for the presidency. Both

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19. (SBU) Despite these challenges, the Arias Administration remains committed to completing the legislation and implementing CAFTA. Citing the newly-cooperative attitude of the PAC party, Arias himself told visiting WHA DAS Kirsten Madison on April 1 that the CAFTA laws should be completed in the next three months (i.e., by the end of June). Arias (and by implication, his pushing to complete CAFTA) remains popular. He received a 50 percent good or very good rating in a UNIMER poll released March 24 with the lowest negative rating (14 percent) since taking office. The public and most political parties are tired of the protracted CAFTA debate and want to close this chapter and move on to other important issues, such as tougher laws on domestic security, which tops the polls as the public's chief concern.

110. (SBU) Because of these challenges, GOCR interlocutors including VP Laura Chinchilla, Minister of the Presidency (and the President's brother) Rodrigo Arias and COMEX Minister Marco Vinicio Ruiz may press AUSTR Eissenstat for "political" solutions to the most difficult pending CAFTA issues on IPR, insurance and biodiversity. We do not expect them to ask for more time to implement CAFTA; they understand that the extension to October 1 was a one-time exception. They may ask for more "understanding" and political room to maneuver to wrap up the remaining legislation (and regulations). In response, Eissenstat can affirm the USG's positions on the pending issues, in effect, establishing red lines on substance while urging continued progress.

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111. (SBU) The pending issues include:

- On IPR, the issue is dangerously fluid as the legislators do not always follow COMEX's counsel; COMEX responds by advocating for leniency from USTR. Although graduated penalties were included in the legislation and passed, legislators from all parties agreed with the Sala IV's "disproportional" ruling, and the generic drug industry continues to pressure select G38 members to soften the IPR legislation in their favor;
- On insurance, the GOCR reacted favorably to USTR's new phrasing on the issue of a government guarantee. Timing is the problem as the insurance bill matriculated in the Asamblea to a point where it now cannot be amended. The GOCR needs to develop a legislative tactic for introducing an insurance amendment;
- On biodiversity, the GOCR wants its existing biodiversity law to remain intact, claiming "it was progressive in its time," although it is in conflict with legislation required for CAFTA compliance. The GOCR desires to paper over the difference by asserting that international treaties have priority over domestic law without having to change the law;
- On the patent law, legislators acted independent of COMEX's counsel and changed wording which now makes the law non-compliant with CAFTA. Though the intent was not to undermine CAFTA, the results of the change create a new problem;
- On the regulations, USTR needs to review all of the regulations well in advance of October 1, and Eissenstat will want to reinforce this message. For telecommunications, the GOCR must develop a solution to unravel the coordination problems between ICE (the state telecommunications and energy utility), MINAE (Ministry of the Environment and Energy), and ARESEP (Regulatory Authority of Public Services); and
- On the amendments, the Asamblea needs to pass the CAFTA amendments which are about to be introduced.

112. (SBU) Having come so far on CAFTA, and increasingly focused on/distracted by other priority issues, it is tempting for Costa Rican legislators to assume that implementation is inevitable. As the recent challenges indicate, however, political focus and discipline are still required to get the job done. This would be another useful message from Eissenstat. His interlocutors will also be interested in the "view from Washington" on the Colombian FTA, and the general (anti-trade) tone in the Congress and in the U.S. presidential campaign.

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113. (U) Without CAFTA, the textile and the tuna sectors are at risk due to the short-run possibility of the loss of Caribbean Basin Trade Promotion Act (CBTPA) trade preferences on October 1 and the long-run risk that Costa Rica will not have permanent, tariff-free access to the U.S. market. For Costa Rica, both risks would portend a competitive disadvantage with its CAFTA neighbors. Business leaders predict 20,000 jobs in the tuna and textile sectors are at stake. Since DAS Madison visited a leading tuna cannery to underscore this risk during her visit, we plan to have AUSTR Eissenstat visit an at-risk textile plant.

114. (U) In the intensely competitive textile industry, buyers want price certainty which Costa Rican companies currently cannot provide. Indicative of the uncertainty, the industry contracted from \$730 million in 2002 to \$557 million in 2006. The Costa Rican textile industry is heavily reliant on the U.S. market and the preferential treatment it receives under the CBTPA (Ref D). The U.S. accounted for 86 percent of its total textile exports in 2006 and CBTPA lowers the U.S. tariff from 18 percent to zero for most textile products. Thus, without an implemented CAFTA, industry uncertainty has reached critical levels as producers openly talk about moving production outside of Costa Rica. Eissenstat will also be able to discuss these issues further with AMCHAM members during his visit.

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